

Fair Debt Collection Practices Act – “FDCPA” – 15 U.S.C. § 1692 *et seq.*

Federal debt collection protection Act written with the purpose of:
Leveling the field so compliant debt collection agencies have a fair shot at competing in the industry. The original rationale or motivation was to protect the “good” collectors with the consumer benefiting from the protections written into the law.

Target is Unfair or Deceptive Acts and Practices by collectors.

Key point to remember – The law only regulates 3rd party debt collectors, NOT original creditors collecting their own accounts.

Who are collectors?

Anyone that regularly collects debts owed someone else is a “debt collector.”

Who is protected?

People with debts incurred for personal, family, or household purposes. NOT BUSINESS DEBT!

Strict Liability Statute – does not require intent to violate.

CONSUMER is defined as: “Unsophisticated” in their understanding.

Meaning low on the meter of sophistication and understanding of language and the law.

Protections under the FDCPA Include:

1. Notice of rights
2. Overshadowing – demanding payment in less than 30 days, which is the time allowed to dispute and demand validation of alleged debt
3. Real and true name of collector
4. Envelope provides return address only – no name of collectors
5. Deceptive threats – FALSE THREAT OF LEGAL ACTION
* CANNOT THREATEN CRIMINAL ACTION
6. Cannot misrepresent the amount of the alleged debt
7. Cannot sue you in the wrong jurisdiction
8. Once told – cannot contact at work
9. Upon written notice of no contact collector must stop – BUT – does not mean they won't sue you
10. Upon notice that you have a lawyer collector cannot contact you, must only contact attorney
11. Cannot collect additional amounts not permitted by original agreement or by law, (such as fees, interest, costs of collection)
12. Cannot contact family or friends – OTHER THAN TO VERIFY WHEREABOUTS OR EMPLOYMENT

COMMON LETTER OR PAPER VIOLATIONS:

“Flat rating” – debt collector sends a letter directing payment to original creditor, which is confusing.

“Overshadowing” – demands early payment.

Lawyers sending collection letters must have reviewed the file and have knowledge of the alleged debt.

Hearing from any debt collector is an extreme source of STRESS for the elderly.

Congress provided jurisdiction in the federal courts for violations of FDCPA. Unless familiar most attorneys generally stay away from federal court.

Individual cases allow for statutory damages up to \$1,000.00 and any actual damages the plaintiff suffered. Generally these are the emotional distress type of damages. Successful Plaintiff may also receive costs and award of Plaintiff's attorneys' fees.

Class action cases where the collector has pursued a practice against a number of Nebraska residents offers damages that include 1% of defendant debt collector's net worth up to \$500,000.00, as well as costs and attorneys' fees.

There are some state debt collection statutes, but not in Nebraska.

Nebraska does have the Nebraska Consumer Protection Act. (NCPA) Neb. Rev. Stat. § 59-1601 *et seq.* Violation of federal statute may be considered a *per se* violation of the state Act. However, look out for *Nelson v. Lusterstone*, 258 Neb. 678, 605 N.W.2d 136 (2000). Calls for a public interest element to the case before cause can be pursued.

Nebraska also has a state Deceptive Trade Practices Act. Neb. Rev. Stat. § 87-302 *et seq.*

Statute of limitations is important in these cases. Federal FDCPA is one year from date of event. State claim under NCPA is four years.

OLD CREDIT CARD ACCOUNTS

Written off and sold by credit card issuers.

Statute of limitations starts when last payment is made. If statute of limitations has run collector may attempt to collect, BUT may not threaten suit or actually bring an action in court without violation of FDCPA.

These accounts may appear in many different forms on credit reports. Once for every party in the line when sold as well as written off by the original creditor and then as a public record if suit is filed.

DEFENDING SENIORS SUED BY DEBT COLLECTORS

1. Collectors are looking for default judgments.
2. Do discovery, make them prove it.
3. Check statute of limitations.
4. Has the account been paid?

Consider: Social Security benefits are not subject to garnishment, if not commingled with other funds.

WHAT ATTORNEY CAN DO TO ASSIST?

1. Write a letter? – No, look out for a slap suit
2. Encourage Consumer to get credit reports
3. Debt created while married > divorced and decree says debt is responsibility of spouse. Contempt action against spouse in divorce.

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